

AFWA Concerns with Draft Proposed USFWS Policies Regarding Fish and Wildlife Management on Alaska NWRs

The USFWS has developed a proposed regulations package which would have the effect of limiting hunting authorized under certain State of Alaska regulations on National Wildlife Refuge (NWR) lands. The package is currently under review by the Department of the Interior. The State of Alaska is awaiting a two-week internal, confidential review period of the EA and final regulations package. Following that internal review the USFWS will release it for a 90-day public review period.

The USFWS Proposal:

The National Wildlife Refuge System Administration Act (NWRSA) as amended by the National Wildlife Refuge System Improvement Act (NWRZIA) at Sect 668(dd)(a)(4) assigns the Secretary 14 responsibilities in administering the System. At Sect. 668(dd)(4)(B) the Act directs the USFWS to “ensure that the biological integrity, diversity and environmental health of the System are maintained for the benefit of present and future generations of Americans.” The USFWS draft proposal would codify in regulation for Alaska NWRs, USFWS policy 601 FW 3 regarding Biological Integrity, Diversity, and Environmental Health(BIDEH) and make it the *raison d’être* for Alaska refuges. AFWA concerns are:

- a. There are 13 other statutory responsibilities given to the Secretary and the Act does NOT prioritize those responsibilities but simply lists them. Likewise, House Committee Report 105-106 (NWRZIA) does not assign a priority to these 14 responsibilities. The USFWS is assigning priority to this aspect of administering refuges over all others.
- b. The adoption of this one aspect of the Act as regulation clearly usurps and undermines the authority, responsibility, and objectives of the Alaska Department of Fish and Game regarding the conservation (including take) of fish and resident wildlife in AK under the sustained yield principle. This authority is grounded in Article VIII of the AK Constitution.
- c. Sect 668(dd)(m) states in part “Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations and management plans.” The current proposal by the USFWS clearly is not consistent with this Congressional direction.
- d. While the proposal is currently intended to apply only to AK refuges, there is nothing preventing the USFWS from subsequently applying these regulations to all refuges in the System, resulting in usurpation and undermining of state fish and wildlife authority to manage fish and resident wildlife on all refuges in the System.
- e. The USFWS is directed at 43 CFR 24.4(e) to manage refuge units “to the extent practicable and compatible with the purposes for which they were established, in accordance with State laws and regulations, comprehensive plans for fish and wildlife developed by the states, and Regional Resource Plans developed by the Fish and Wildlife Service in cooperation with the States”. Instituting the region-wide rule outside of the CCP processes for the individual refuges and in conflict with state wildlife management plans is contrary to this intent.

5. Significant changes that would result from the proposed rule would:

- Introduce undefined and subjective reasons for closing refuges to hunting under state regulations, including “particularly efficient” methods and means of take and “conserving the natural diversity, biological integrity, and environmental health of the refuge,” absent decision criteria to guide refuge managers or the public in its implementation.
- Prohibit methods and means for the take of species under state management authority, seeking to “Prohibit the following particularly efficient methods and means for non-subsistence (Federal) take of predators”, including prohibiting the use of bait for the harvest of brown bears. If the use of bait is “particularly efficient” for brown bears, what would prevent application of this criteria to other species (black bear) in Alaska or in the Lower 48 where currently allowed under state authorization.
- The USFWS intends to “manage populations for natural densities and levels of variation throughout the Refuge System”, and that “These proposed regulatory changes are aimed at ensuring that natural ecological processes and functions are maintained and wildlife populations and habitats are conserved and managed to function in their natural diversity on Alaska refuges.” This intent lacks criteria for implementation or consistency with state fish and wildlife agency planning and could easily be applied to all NWRs in the system.
- Proposed changes to the USFWS closure process includes an allowance that would essentially permit “temporary regulations” to extend indefinitely, avoiding both the full regulatory process and the CCP process allowing for public comment.

We are concerned that movement of the BIDEH policy into regulation will diminish the ability of the states to manage fish and wildlife on NWRs. While the current proposed rule only targets Alaska and the management of predators, there is the distinct possibility it would be applied to the NWRs nationally and that other refuges would be required to manage for the extreme end of BIDEH for all species (predators and prey) through the litigation efforts of anti-hunting NGOs based on the precedent of the Alaska rule. For example, a state may manage ungulate populations for bull: cow ratios of 30:100, which allows for sustainable harvest opportunities. This is not a “natural population,” but a reasonable objective for state management goals under sustained yield management.

The USFWS has not differentiated the need to manage Alaska refuges at the extreme end of the BIDEH spectrum, other than to mention the ANILCA purpose of “natural diversity,” which is not equivalent to BIDEH. Therefore application of this policy could conceivably extend to other refuges as well, superseding refuge purposes and influencing management of areas such as Waterfowl Production Areas by requiring that the USFWS to apply “natural ecological processes,” significantly limiting opportunities for compatible wildlife-dependent public uses. The regulations proposed by the USFWS do not address any conservation concerns for any species and appear to be derived by concerns regarding ethical behavior as determined by USFWS staff.

Links to the USFWS generated documents are below:

http://www.fws.gov/alaska/nwr/ak_nwr_pr.htm

National Wildlife Refuge System Legislative Background

1. The administration of the National Wildlife Refuge System (NWRS) is governed by the National Wildlife Refuge System Administration Act (16 USC sect. 668dd) (hereafter the Act) as amended by the National Wildlife Refuge System Improvement Act of 1997(NWRSIA). The Act is a comprehensive organic act establishing a mission of the System, statutory purposes of the System, giving direction to the Secretary regarding administration of the System, direction regarding acquisitions to the System, development of Comprehensive Conservation Plans (CCP), direction to cooperate with state fish and wildlife agencies during acquisition and management of the System, and several other provisions.
2. Sect 668(dd)(f) of the Act with respect to Refuge conservation planning, states “except with respect to refuge lands in Alaska (which shall be governed by the refuge planning provisions of the Alaska National Interest Lands Conservation Act [ANILCA]), the Secretary shall ...” . This language was specifically drafted in NWRSIA to ensure that with respect to conservation planning ANILCA prevailed over NWRSIA on Alaska refuges.
3. Section 9 of NWRSIA as enacted explicitly states “If any conflict arises between any provision of this Act and any provision of the Alaska National Interest Lands Conservation Act, then the provision in the Alaska National Interest Lands Conservation Act shall prevail”, providing primacy of ANILCA over NWRSIA in general.
4. The remainder of the Act applies to all NWRs in the System, including Alaska, unless there is a conflict with ANILCA.